



COMMONWEALTH of VIRGINIA

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AUG 01 2016

Mr. David Arnold, Director
Air Protection Division (3AP00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Reference: Startup/shutdown/
malfunction (Revision B16)

Dear Mr. Arnold:

Pursuant to the requirements of § 110 of the Clean Air Act, we are officially requesting approval of a revision to the Commonwealth of Virginia State Implementation Plan approved and submitted under the authority of § 10.1-1185 of the Code of Virginia and in accordance with the requirements of 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

This revision consists of several regulatory actions affecting startup, shutdown and malfunction. Revision D97 originally amended 9VAC5-20-180 but was not submitted as a SIP revision; it is now being submitted in order to provide a correct baseline for the provisions of Revision B16. As discussed below, sections relevant to 9VAC5-20-180 are also being submitted for the purpose of several VOC regulations.

Revision D97: Under this revision, 9VAC5-20-180 was amended as follows: (i) Provisions were added to clarify that 9VAC5-20-180 applies to only facility and control equipment maintenance or malfunction. (ii) Provisions were added to specify an affirmative defense does not apply to excess emissions due to malfunction or maintenance for sources subject to NSPSs, NESHAPs, MACT, or acid rain provisions of the federal Clean Air Act; or that cause an exceedance of an ambient air quality standard or PSD ambient air quality increment. (iii) Provisions were changed to be consistent with recommendations made pursuant to the review of existing regulations mandated by Executive Order 15(94). (iv) Provisions pertaining to malfunctions for hazardous air pollution sources were revised because they were

not consistent with requirements pertaining to sources which meet federal standards for hazardous air pollutants. (v) Provisions that provide legal relief if a violation has taken place due to excess emissions as a result of facility and control equipment maintenance or malfunction were changed in order to entitle the owner of a facility to use an affirmative defense for relief from penalties. (vi) Provisions pertaining to facility and control equipment maintenance or malfunction were changed to incorporate the limitations and the criteria for an affirmative defense. (vii) Provisions that authorize the board to reduce the level of operation or shut down a facility if it is necessary to prevent a violation of any primary ambient air quality standard were expanded to include any ambient air increment identified in the PSD program.

Revision B16: On June 12, 2015 (80 FR 33840), EPA issued a final SIP call concerning treatment of excess emissions in state rules by sources during periods of startup, shutdown or malfunction, including Virginia's rules at 9VAC5-20-180 G. The U.S. Court of Appeals for the District of Columbia Circuit has held that such provisions are illegal, and state plans must be amended accordingly. Essentially, EPA found that 9VAC5-20-180 G created an impermissible affirmative defense for violations of emission limits; therefore, 9VAC5-20-180 G was amended accordingly. 9VAC5-20-180 C was also be amended in order for 9VAC5-20-180 G to operate properly, and to make several minor administrative changes.

Revisions C09, D09, E09: At the time these regulations were promulgated, there was uncertainty as to the status of Virginia's malfunction regulations; therefore, those provisions were not submitted as SIP revisions when the rest of the rules were submitted to EPA on February 1, 2016. Now that the issue of malfunctions has been resolved and 9VAC5-20-180 has been amended to EPA's satisfaction, reference to 9VAC5-20-180 may now be submitted for the purpose of these rules.

The regulation amendments were adopted by the State Air Pollution Control Board under the authority of § 10.1-1308 of the Code of Virginia.

Enclosed are the following:

1. A true copy of the official regulations which was published in the Virginia Register of Regulations after being duly adopted by the State Air Pollution Control Board, certified by the Office of the Attorney General as within the board's statutory authority and thus fully enforceable under Virginia law, and submitted to the Virginia Registrar on behalf of the board by the Department of Environmental Quality as a true and accurate copy of the duly adopted regulation. The final regulations are provided in Attachments 1 and 2, as well as the submittal, approval and publication dates for each action.

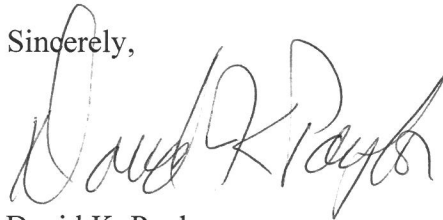
2. Certification of public participation activities and compliance with state administrative procedures.

3. Public participation certification.

For purposes of this submittal, certain provisions are being included for information purposes only and are not to be construed as part of the Commonwealth of Virginia State Implementation Plan; these provisions are specifically identified in Enclosure 2 of this submittal.

If you have any questions or need additional information, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor". The signature is fluid and cursive, with the first name "David" being more prominent.

David K. Paylor

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Enclosures